IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4678 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANDEEP V SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 4678 of 2001

MR SV RAJU for Petitioner No. 1-3

MR AD OZA PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 11/07/2001

ORAL JUDGEMENT

1. Rule. Mr. A.D. Oza, learned Public Prosecutor waives service of Rule. By consent of learned advocates

for the parties, this application is being heard and disposed of finally.

2. This is an application under Section 439 of Criminal Procedure Code, 1973 for enlargement of the petitioners on bail in connection with CR. No. I-59/2001 registered at Navrangpura Police Station relating to offences punishable under Section 304, 120-B, 418, 420 I.P.C. read with Section 2 of the Gujarat Ownership Flats Act, 1973.

3. Chargesheet appears to have been filed against the petitioners for aforesaid offences. It is contended by the prosecution that the petitioners had constructed certain buildings in Navrangpura Area in Ahmedabad City. That the construction commenced in 1994 and it was concluded in December, 1995. That the petitioners used defective materials and sub-standard material in the aforesaid construction. That the petitioners also constructed additional structure so that there was additional burden on the aforesaid construction. That certain balconies were constructed, seller was constructed as additional structure, the water tank at the top were constructed larger in size and heavier in weight contrary to the sanctioned plan. That the foundation provided was less then the sanctioned plan. That columns, bims and slabs were insufficient and even additional construction of under ground water tank was also found. That soil test was not undertaken and the measures were not taken for earthquake resistance. That, therefore, the petitioners knew that this building was likely to collapse and the person staying in it were likely to suffer injuries resulting into death. In above facts the petitioners are alleged to have committed death of the persons who died on account of collapse of the building on 26/1/2001 soon after the earthquake. Therefore, it is said that the petitioners had knowledge that the building is such, which would collapse and because of the collapse of the building, the persons staying in it would suffer grievous hurt. It is also contention of the prosecution that aforesaid death and injuries were caused by the petitioners with knowledge. That their action of construction of the above building in aforesaid manner was likely to cause death of those persons and to cause grievous hurt. Therefore, the aforesaid charge has been levelled against the petitioners and the chargesheet has also been filed after conclusion of the investigation.

4. The petitioners have come with a case that there was no defect in the material and there was not defective

design. It is also contended that the petitioners are not responsible for the offences for which they stand charged in chargesheet and therefore, they may be enlarged on bail.

5. It is not necessary at this stage to enter into the controversy as to whether or not the petitioners have really committed any offence punishable under Section 304 I.P.C.

6. We take it for granted that the petitioners have committed offence punishable under Section 304 I.P.C., then, it was conceded that the offence would be one under Section 304(2) I.P.C. and not under part - I of Section 304 of I.P.C.

7. The learned PP has strongly objected to the grant of this application stating that the petitioners have committed serious offences and therefore, no leniency should be shown to them and therefore, the application deserves to be dismissed. The above argument has been duly considered and thought has been given to the same. At the same time, it is not much in dispute that the persons similarly situated have been ordered to be released on bail by this Court in a group matter being Cri. Misc. Application No. 4065/2001. There also the builders were enlarged on bail in similar situation. They also stood chargesheed for the offences punishable under Section 304(2) I.P.C. Again it has to be considered that the offence punishable under Section 304(2) of IPC is punishable with imprisonment for 10 years or with fine or with both. This would naturally mean that this offence is not punishable with life imprisonment or death. Even, it is not compulsory to impose jail sentence and the Court concerned can use its discretion in a proper case to impose punishment of fine dispensing with the jail sentence.

8. Considering the above aspect of the case, the petitioners in those group matters preferred by them have been enlarged on bail and there is no reason to differ from the view adopted in the said matter.

9. In above view of the matter and on the basis of parity and looking to the facts and circumstances of the case, this petition is allowed. The petitioners are ordered to be released on bail on furnishing solvent surety and PR to the tune of Rs. 50,000/- each (Rs. Fifty thousand Only) each on following conditions.

CONDITIONS :

1. The petitioners shall not leave Ahmedabad City and Ahmedabad Rural District till completion and conclusion of the entire investigation and till the submission of final chargesheet against all the accused persons and till the apprehension and arrest of them without the express permission of the learned City Sessions Judge, Ahmedabad.

2. The petitioners shall not approach, contact, induce or threaten the witnesses connected with the offence in question.

3. The petitioners shall file an affidavit before the learned City Sessions Judge, Ahmedabad showing the place of their residence after their release on bail which would contain details about full address and telephone numbers, if any.

4. The petitioners shall personally remain present on every 1st working day of the month according to British calendar before the learned City Sessions Judge, Ahmedabad between 2 p.m. and 5 p.m. and mark their presence there. The learned City Sessions Judge, Ahmedabad shall make appropriate arrangement for obtaining their signatures on their appearance.

5. The petitioners shall not leave Gujarat state without prior permission of the learned City Sessions Judge, Ahmedabad.

6. The petitioners shall not leave the revenue district of the place of residence stated by them in their affidavits, without the permission of the learned City Sessions Judge, Ahmedabad.

7. Petitioners shall deposit their passport, if any, before the concerned police Station before their release on bail. In case a petitioners does not hold any passport, then in that case, they shall file an affidavit before the learned City Sessions Judge, Ahmedabad accordingly.

8. The learned City Sessions Judge, Ahmedabad shall write Yadi to the Passport Office, Ahmedabad with respect to the aforesaid conditions imposed upon the petitioners restricting their movement and that they have not been permitted to visit abroad, for their information and action.

9. The petitioners, before their release on bail as aforesaid, shall deposit a sum of Rs. 50,000/- each (Rs. Fifty Thousand only) each before the learned City Sessions Judge, Ahmedabad for the due performance of the aforesaid conditions by the petitioners. The learned City Sessions Judge Ahmedabad will be at liberty to place the said amount in FDR in the name of the officer of his Court at the instance of the petitioners.

10. If any one or more conditions are reported to have been breached by the petitioners, the learned City Sessions Judge, Ahmedabad shall be at liberty to issue non-bailable warrant against the petitioners.

11. Bail Bond be executed before the learned City Sessions Judge, Ahmedabad.

Rule is made absolute accordingly. D.S. Permitted.

(D.P.Buch, J.)
pallav.

FURTHER ORDER :-

After pronouncement of the orders in this matter, learned Public Prosecutor Mr. A.D. Oza, appearing for the State has made a submission that the aforesaid order releasing the petitioners on bail may be suspended for at least two weeks in order to enable the State to file appropriate proceedings before the higher forum. As against this, learned Advocate for the petitioner has strongly objected to it. Mr. S.V. Raju, Ld. advocate arguing for the petitioners has argued that the matter requires consideration and argument, therefore, S.O. to 13.7.2001, in the mean time, the above order stands suspended till 13.7.2001.

(D.P. Buch, J.)
pallav